



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 18507551

Date: SEP. 20, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a financial manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the subsequent appeal the subsequent appeal. The Petitioner now files an untimely combined motion to reconsider and reopen the matter.

Upon *de novo* review, we will dismiss the motions.

**I. LAW**

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

**II. ANALYSIS**

The Petitioner filed her Form I-140, Immigrant Petition for Alien Workers, on December 21, 2017, as a foreign national applying for a National Interest Waiver who is a member of the professions holding an advanced degree or an individual of exceptional ability. The Director denied the petition on September 19, 2019. The Petitioner appealed the decision on October 18, 2019, which we dismissed on August 26, 2020, finding the Petitioner had not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.<sup>1</sup> The Petitioner

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<sup>1</sup> See *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

then filed an untimely combined motion to reopen and reconsider on November 18, 2020, which was rejected and returned to the Petitioner due to being filed on an outdated version of Form I-290B, Notice of Appeal or Motion.<sup>2</sup> She then resubmitted her untimely combined motion to reopen and reconsider on January 28, 2021.

#### A. Motion to Reconsider

On motion, the Petitioner requests we reconsider the Director of the Texas Service Center's decision and argues the decision contained erroneous conclusions of law. However, a motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider. 8 C.F.R. § 103.5(a)(1)(i). Here, the Petitioner's initial rejected motion to reconsider as well as the corrected motion to reconsider were filed 30 days after our unfavorable decision. Since the Petitioner has made a motion to reconsider 30 days after our unfavorable decision, we will dismiss her motion to reconsider the matter.<sup>3</sup>

#### B. Motion to Reopen

On motion, the Petitioner requests we consider her untimely motion to reopen due to the effects of the COVID-19 pandemic on the world economy and, particularly, the Brazilian tourism industry. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

Here, the Petitioner provided a written affidavit indicating that the COVID-19 pandemic caused a very difficult year in 2020 that affected the world economy and the tourism sector in Brazil. However, the Petitioner's affidavit did not provide any details regarding why the delays in filing her rejected motion to reopen or her corrected motion to reopen were both submitted over 30 days after our unfavorable decision and outside of the 60 days allowed by USCIS COVID flexibilities. While the Petitioner's affidavit indicates the COVID-19 pandemic created problems for her as a financial manager working in Brazil, she did not explain why the pandemic caused her to delay filing her motions to reopen past the extended deadline allowed by USCIS COVID flexibilities or that the delay was beyond her control. We will therefore deny her motion to reopen the matter.

### III. CONCLUSION

We will deny the Petitioner's motion to reconsider the matter because she did not file her motion within 30 days of the decision she seeks to reconsider. In addition, we will deny her motion to reopen the proceeding because her affidavit did not meet the requirements for reopening an untimely motion to reopen as a matter of discretion.

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<sup>2</sup> The Petitioner was notified her form was rejected on January 6, 2021.

<sup>3</sup> Both of the Petitioner's rejected motion to reconsider and resubmitted motion to reconsider were also filed outside of the 60 days allowed by USCIS COVID flexibilities. See, USCIS Extends Flexibility for Responding to Agency Requests, available at: <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-4> (last accessed on September 1, 2021).

**ORDER:** The motion to reconsider is denied.

**FURTHER ORDER:** The motion to reopen is denied.